
(2015) 07 P&H CK 0367

In the Punjab And Haryana At Chandigarh

Case No : CRA-D No. 927-DB of 2012 (O and M)

Akram Khan

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 13-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 313
Penal Code, 1860 (IPC) — Section 302, 376

Citation : (2015) 07 P&H CK 0367

Hon'ble Judges : Hemant Gupta and Lisa Gill, JJ.

Bench : Division Bench

Advocate : Akshay Jain and Manav Bajaj, Advocates, for the Appellant; Manjari Nehru Kaul, Addl. Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Lisa Gill, J.—This appeal has been preferred by Akram Khan son of Akhtan Khan impugning judgment and order dated 01.07.2010 and 02.07.2010 respectively whereby he has been convicted for the offence punishable under Section 302 IPC and sentenced to undergo imprisonment for life besides pay a fine of Rs. 20,000/- and to further undergo rigorous imprisonment for two years in default of payment of fine and further convicted for the offence punishable under Section 376 IPC and sentenced to undergo rigorous imprisonment for 10 years besides pay a fine of Rs. 10,000/- and to further undergo rigorous imprisonment for one year in default of payment of fine.

2. Prosecution was set in motion on the statement Ex.PC of complainant Chote Lal PW3 recorded on 27.09.2006 before SHI/SHO Ashwani Kmar PW6. He disclosed that on the intervening night of 26/27.09.2006 he alongwith his daughter Baby aged about 11 years and other members of his family had gone off to sleep together after watching television till 12 o'clock. His daughter Baby was found missing from her bed on the morning of 27.09.2006. He proceeded to his cousin Krishna's house and started searching for her. While looking for her,

Baby's dead body was discovered lying in a vacant plot having a boundary wall under the bushes behind residential house of the complainant. Strangulation marks were found on the neck of the deceased as well as bleeding from private parts was noticed. He stated that some unknown person appears to have enticed and abducted her from his house and strangled her to death after committing forcible intercourse. Legal action was prayed for.

3. On the basis of this statement, formal FIR Ex. PC/2 was registered. A gents slipper of brown colour recovered from near the body was taken in possession vide memo Ex. PF. Inquest report Ex. PC/4 was prepared. Post mortem report Ex. PB was received in which it was stated that the cause of death would be given after receiving chemical examiner's report. On receipt of chemical examiner's report Ex. PC Board of Doctors, who conducted the post mortem report opined that the cause of death was strangulation.

4. PW2 Dr. Surinder Singh Nangal specifically deposed that on dissecting the neck, underlying subcutaneous and tissues of a child were found congested and muscles of neck were found lacerated and internal side of the neck showed white parchment. Board also examined the deceased per vagina to find hymen posteriorly torn extending over to the post fourchette and bleeding from vagina. Two vaginal swabs and two smear slides were prepared and sent to chemical examiner for detecting presence of semen. Another set of two vaginal smear slides and two vaginal swabs were taken for the purpose of DNA testing.

5. PW4 Vanita d/o Chote Lal, sister of the deceased suffered disclosure statement Ex. PX on 29.09.2006 before SI/SHO Ashwani Kumar that she accompanied her mother for cleaning in various houses. Her sister aged about 12 years was engaged in work of cleaning the house of Gurcharan Singh r/o Mithapur. On 26.09.2006 when she was returning home alongwith her deceased sister Baby at about 6.30 p.m. accused Akram Khan, a Rickshaw Puller met them on the way near liquor vend and kept staring at them. A month and a half prior to this incident, accused had told her sister Baby that he would abduct her. She left her sister with her mother. After having narrated the incident had returned back to the house where she was working. Next morning her mother came to the house where Vanita worked and informed that some unknown person had strangled Baby after committed forcible intercourse with her. She came back to her house with her mother on hearing this. She also came to know that accused Akram Khan attempted to commit forcible intercourse at about 11.30 p.m. with Nargis d/o Atiq Mohammed after scaling the wall of their house while she was sleeping in her room. Thereafter, Akram Khan also tried to commit forcible intercourse with one Devki in adjoining room of Akram Khan.

6. PW12 Nargis specifically deposed that appellant had tried to force himself upon her on the night of 26.09.2006. He was caught hold of but let off after he pleaded forgiveness from her parents. He went inside the room of another girl Devki and tried to force himself upon her.

7. Mother of the deceased, PW 5 Choti also recorded her statement on similar lines on 29.09.2006. On receiving this information, the investigating officer proceeded to investigate on the above said lines. Appellant - Akram Khan was arrested on 08.10.2006 by SHO Ashwani Kumar. Accused suffered disclosure statement Ex. PG and got recovered brown colour slipper of left foot and underwear and parna from his living room. They were converted into a sealed parcel and taken in possession vide separate recovery memo.

8. On an application moved by the prosecution to which accused offered no resistance, blood sample of the accused was taken on 15.09.2007 for DNA testing. It is observed by the learned trial Court vide its order dated 15.09.2007 that blood sample had been drawn by Dr. Davinder Singh, Medical Officer, Civil Hospital Jalandar PW10. Blood sample was duly sealed with his seal bearing letter GG21. Blood sample was prepared into a parcel in a thermos flask containing ice and all steps taken to ensure that blood sample did not disintegrate. Vaginal swabs, slides of the deceased, blood of the accused and other material objects were sent to chemical examiner. As per report Ex. PK, submitted by Centre for DNA Fingerprinting and Diagnostics, Hyderabad, (CDFD) profile of the semen on the vaginal slides matched with the accused.

9. On completion of investigation, report under Section 173 Cr.P.C. was submitted. Charge was framed on 14.02.2007. Prosecution examined as many as 15 witnesses to prove its case against the accused. Accused while denying incriminating material put to him pleaded false implication and innocence in his statement under Section 313 Cr.P.C. However, no evidence was led in defence.

10. Learned trial Court on consideration of the entire evidence on record concluded that the prosecution had proved its case beyond reasonable doubt against the accused thereby convicting the appellant for the offence punishable under Section 302, 376 IPC and sentencing him as detailed above. Aggrieved therefrom the present appeal has been preferred.

11. Learned counsel for the appellant impugns the conviction of the appellant primarily on the ground that conviction could not have been based on the DNA report Ex. PK. Apart from the said report there is no other evidence to incriminate the appellant. A suspicion is sought to be cast on the report itself. It is submitted that evidence on record shows that only two vaginal slides and two vaginal swabs were taken and handed over to SI/SHO Ashwani Kumar. Said swabs and slides were sent to the office of Chemical Examiner, Punjab, Patiala on 29.07.2006, therefore, there was no occasion for sending two more vaginal swabs and slides to the office of CDFD, Hyderabad which are shown to have been received in that office on 26.10.2006. Apart from the above, there is not a shred of evidence to connect the appellant with the alleged offence. PW4 Vanita and PW 5 Choti i.e. the sister and mother respectively of the deceased have not supported the prosecution version. In such a situation, conviction of the appellant is stated to be wholly unjustified and illegal.

12. Learned counsel for the State, however, contends that link evidence is complete in this case and there is overwhelming evidence to show that the accused is guilty of the offence as charged, he, therefore, prays that the impugned judgment and order dated 01.07.2010 and 02.07.2010 be upheld.

13. We have heard learned counsel for the parties and gone through the record minutely and find no merit in the arguments raised on behalf of the appellant.

14. It is apparent that the complainant - Chote Lal in his statement Ex. PC has not named anyone for obvious reasons. It is on the statement Ex. PX of Vanita and Ex. PY of Choti, mother of the deceased that the police started investigating in that direction. Subsequently, accused Akram Khan was arrested on 08.10.2006. His blood sample was taken on 15.09.2007 after an application moved by the prosecution was allowed by the trial Court. It is to be noted that this application for taking up the blood sample for DNA examination was not opposed by the appellant. Report Ex. PK of CDFD, Hyderabad is extremely relevant in this case. There is specific mention of the samples sent alongwith the dates on which they were received. They are described as under in the said report:

15. Conclusion in the said report reads as under:

"The DNA test performed on the exhibits provided is sufficient to conclude that the biological fluid (semen) present on the source of exhibit C (two slides said to be of deceased Baby) is from the source of exhibit D (Mr. Akram Khan)."

16. Learned counsel for the appellant has very strenuously urged that PW6 SI/SHO Ashwani Kumar talks only about two vaginal slides and vaginal swabs handed over to him by the doctor. The same was sent to the Chemical Examiner Punjab, Patiala, therefore, there is no occasion for sending the vaginal slides and swabs to Hyderabad.

17. A close scrutiny of the record reveals that there is no mystery as is proposed to be projected. Post Mortem Report, Ex. PB itself mentions the taking of two sets of each two vaginal swabs and two vaginal smear slides. It is further mentioned therein that one set was sent to the chemical examiner, Punjab and the other for DNA testing after duly sealing the same. PW10, Dr. Davinder Singh member of the Board of Doctors, who conducted the post mortem examination has also deposed clearly in this respect.

18. Court witness No. 1 Dr. D.C. Sharma has also deposed that as per the record and the post mortem report four vaginal swabs and four vaginal slides were lifted during post mortem examination, two of which was sent to the chemical examiner, Patiala and the remaining were handed over to the police. Therefore, doubt cannot be cast only on the basis of omission if any on the part of Ashwani Kumar.

19. It is further proved on record that there was no tampering with such samples and they had been handed over at the Center at CDFD, Hyderabad. ASI Veer

Singh PW8 has deposed that two vaginal slides and two vaginal swabs were handed over to him on 24.10.2006 by MHC Kamaljit Singh. He deposited the same in the office of CDFD, Hyderabad on 26.10.2006. Material was not tampered while in his possession neither he allowed anyone else to do so. Deposit of the sample on 26.10.2006 is duly proved vide report Ex. PK. PW9 Head Constable Gurmej Singh has proved the deposit of blood sample of the accused with CDFD, Hyderabad. Contention that ASI Veer Singh did not depose about the deposit of the samples to CDFD Hyderabad at the very outset but at a later stage when he was recalled for further statement is of no avail. Similar contention in respect to Head Constable Kamaljit Singh not deposing about the deposit of the samples at the very outset is not acceptable. There is no merit in the argument that reliance cannot be placed on the testimony of the witnesses who have deposed about material facts at a later stage. It is a matter of record that the prosecution had moved necessary applications, which were duly allowed by the trial Court and at times without demure from the defence.

20. Another argument raised which is equally devoid of merit is that Ex. PK i.e. report of CDFD, Hyderabad not being a part of the challan under Section 173 Cr.P.C. cannot be relied upon to convict the accused. It is a matter of record that an application had been duly moved by the prosecution for taking the blood sample of the accused for DNA examination. It is recorded in the order dated 24.05.2010 by the trial Court that accused Akram Khan had made a statement reduced into writing duly endorsed by his counsel on 18.05.2007 that he did not contest the application and was willing to give the sample. In this view of the matter, it does not lie with the appellant to raise this plea at this stage.

21. Similarly it is of no consequence that PW4 Vanita and PW5 Choti have not supported the prosecution version. It is apparent that investigation had proceeded in the direction it did, consequent to their statements. Furthermore, PW12 Nargis has duly supported the prosecution version. Her testimony lends credence to the initial version given by PW4 Vanita in her statement Ex. PX. PW12 Nargis has specifically deposed that she was unmarried in September, 2006, residing with her father at Mithapur Road, Dashmesh Avenue, Jalandhar. She was sleeping in her room at about 11.30 p.m. on 26.09.2006. Her parents were sleeping in the courtyard when all of a sudden accused Akram Khan came there and lay himself on her cot. When she tried to raise clamour he tried to gag her and remove her shirt. She, however managed to free herself and when members of her family got up, the accused tried to hide beneath her cot. He was caught hold of by a person in the neighbourhood. Appellant was under influence of liquor and pleaded forgiveness from her parents. Thereafter on being let off by her parents, appellant Akram Khan went inside the room of another girl Devki but on hue and cry being raised over there, he fled from there too. Next morning she came to know that Baby daughter of the complainant Chote Lal was raped and murdered the same night. This witness has no axe to grind against the appellant. Her father was a Fishmonger in the area. There is no reason to disbelieve the testimony of PW12 Nargis.

22. Present is a case in which the prosecution has adduced scientific evidence to nail the accused. We find that the prosecution has indeed succeeded in proving its case beyond reasonable doubt against the accused. Chain of circumstances is complete. There is no missing link therein. Evidence on record conclusively and unerringly points to no other hypothesis but the guilt of the accused. Appellant has been rightly convicted for having raped and murdered an innocent child of 11 years.

23. We find no ground to interfere in the conviction and the sentence imposed upon the appellant vide impugned judgment and order dated 01.07.2010 and 02.07.2010.

24. Accordingly, appeal is dismissed.